

REMARKS

Applicant acknowledges the Office Action mailed January 19, 2006 and submits this Amendment in response thereto with a petition for a one-month extension of time, the cost of which is to be debited from Deposit Account No. 13-2855. Claims 2 and 4-10 are currently pending. Claims 2 and 4-10 are amended herein. Claims 1 and 3 are canceled. In light of the foregoing amendments and following remarks, Applicant believes the current application is in condition for allowance and respectfully requests the Examiner to promptly pass the same to issue.

Allowable Subject Matter

In the Office Action, the Examiner indicated that claims 5, 6 and 8-10 would be allowable if rewritten to overcome the rejections under 35 U.S.C. §112, second paragraph, and to include all of the limitations of the base claim and any intervening claims. Applicant thanks the Examiner for this indication and will independently address the 35 U.S.C. §112 rejections below.

Without conceding the merits of these conditions on allowability, Applicant submits that claim 5 has been rewritten into independent form including the language of now canceled claim 1 and each intervening claim from which it previously depended. Accordingly, Applicant submits that claim 5 is in condition for allowance. Furthermore, Applicant submits that claims 4-10 are also in condition for allowance as being dependent on allowable claim 5.

Rejections Under 35 U.S.C. §112

Claims 1-10 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Office Action alleges that “[i]t is not clear how the device brews a beverage at a first and second brewing pressure. There is recited no structure to perform the claimed function.” Office Action, page 2.

Initially, without conceding the merits of this rejection, Applicant submits that claim 5 has been amended herein to be the only independent claim and to more particularly point out and distinctly claim the subject matter of the present application. Specifically, claim 5 now recites “[a] coffee machine, comprising: a brewing means for preparing at least a first coffee

beverage at a first brewing pressure and at least a second coffee beverage at a second brewing pressure..." Applicant submits that such a recitation properly defines the subject matter of the present application. Specifically, 35 U.S.C. §112, sixth paragraph, provides that "[a]n element in a claim for a combination may be expressed as a means or a step for performing a specified function *without the recital of structure, material, or acts in support thereof...*" (emphasis added). Therefore, Applicant submits that claim 5, as is presently presented, properly points out and distinctly claims the subject matter of the present application and respectfully requests reconsideration and withdrawal of this rejection.

Rejections Under 35 U.S.C. §102

Claims 1-4 stand rejected under 35 U.S.C. §102(a) as allegedly being anticipated by Schmed (U.S. Patent No. 6,382,083). Claims 1, 2 and 7 stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by De Koning et al. (U.S. Patent No. 6,739,240).

Without conceding the merits of these rejections, Applicant submits that claims 1 and 3 have been canceled herein, thereby rendering the rejections, as pertaining to claims 1 and 3, moot. Additionally, as stated above, Applicant submits that claims 2, 4 and 7 have been amended herein to be dependent on allowable claim 5 and therefore are also in condition for allowance. Accordingly, Applicant respectfully requests reconsideration and withdrawal of these rejections.

Conclusion

In light of the foregoing, Applicant believes that all outstanding rejections and concerns have been either traversed, accommodated or rendered moot and therefore the present application is in condition for allowance. Applicant respectfully requests the Examiner to acknowledge the same. Applicant believes that no fee in addition to the petition fee acknowledged herein is necessary for the timely entry of this Amendment. However, if the Office deems otherwise, Applicant hereby authorizes the Director to debit the associated charge from or credit any overpayment to Deposit Account No. 13-2855. Finally, if there are any outstanding issues that the Examiner believes may be remedied via telephone conference, Applicant invites the Examiner to telephone the undersigned at (312) 474-6300.

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Respectfully submitted

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